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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 PAUL STRASTERS and ZADELLE
8 STRASTERS,

9 Plaintiffs,

10 v.

11 WEINSTEIN & RILEY, P.S. and
12 WELLS FARGO BANK, N.A.,

13 Defendants.

NO. CV-10-3070-RHW

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS**

14 Before the Court is Defendants' Motion to Dismiss (Ct. Rec. 8), on which
15 the Court heard telephonic argument on December 16, 2010. At the hearing, the
16 Court denied Defendants' Motion to Strike (Ct. Rec. 13).

17 The Complaint in this matter alleges that Plaintiffs filed for bankruptcy on
18 February 14, 2006, and eventually stipulated to an Order and Judgment of Non-
19 Dischargeability in Defendant Wells Fargo's favor in the amount of \$3,000, with
20 payment to be handled through a trustee who Plaintiffs would pay \$100 per month
21 (Ct. Rec. 1). The Complaint further alleges that Defendants failed to honor this
22 agreement and contacted Plaintiffs directly (not through counsel) seeking payment
23 on the debt. Plaintiffs allege that they then filed a Motion for Sanctions, and that
24 Defendant Weinstein agreed to reduce the principal of the debt by \$1,000 as
25 consideration for dismissing the claim. Plaintiffs allege that they then made several
26 payments and believed the debt was paid in full; however, Defendant Weinstein
27 directly contacted Plaintiffs again claiming that they still owed \$2,000. Plaintiffs
28 allege that this conduct violated the Fair Debt Collection Practices Act ("FDCPA")

1 and the Washington Consumer Protection Act (“CPA”).

2 **Standard of Review**

3 “To survive a motion to dismiss, a complaint must contain sufficient factual
4 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v.*
5 *Iqbal*, — U.S. —, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v.*
6 *Twombly*, 550 U.S. 544, 555 (2007)). The Court must treat the complaint’s factual
7 assertions as true, but that tenet is inapplicable to legal conclusions. *Id.* “When
8 there are well-pleaded factual allegations, a court should assume their veracity and
9 then determine whether they plausibly give rise to an entitlement to relief.” *Id.* at
10 1950.

11 **Analysis**

12 1. *Federal Claim*

13 In support of its first argument for dismissal, Defendants rely primarily on
14 *B-Real, LLC v. Chaussee (In re Chaussee)*, 399 B.R. 225 (9th Cir. BAP 2008).
15 There, the Bankruptcy Panel held that a debtor’s claims of FDCPA and CPA
16 violations were preempted by the Bankruptcy Code. The debtor originally filed her
17 claims in bankruptcy court in response to a collection agency’s filing of two
18 unsecured proofs of claim in the debtor’s pending bankruptcy action. The debtor
19 also filed an objection to the collection agency’s claims; that objection was
20 sustained and the claims were disallowed. The collection agency moved to dismiss
21 the FDCPA and CPA claims, arguing that the objection process under the
22 Bankruptcy Code was the debtor’s sole remedy. The Circuit’s Bankruptcy Panel
23 agreed: “the Code preempts substantive state law claims and remedies for alleged
24 misconduct that occurs in connection with a bankruptcy case.” *Id.* at 232. The
25 Circuit went on to hold that the Code preempted the debtor’s FDCPA claim based
26 on the filing of a proof of claim in a bankruptcy case. *Id.* at 237.

27 *Chaussee* also considered a Seventh Circuit case that the Court finds much
28 closer to the facts here: *Randolph v. IMBS, Inc.*, 368 F.3d 726 (7th Cir. 2004). In

1 *Randolph*, a debtor claimed that she was directly contacted by a collection agency
2 to collect a debt listed on a Chapter 13 bankruptcy plan to be paid over time. *Id.* at
3 728. The collection agency had not participated in the bankruptcy proceeding and
4 apparently was unaware that the proceeding had occurred and that the debtor was
5 represented by counsel. The debtor alleged that the collection agency violated the
6 FDCPA in two respects: (1) by falsely claiming that the debtor was required to pay
7 in full immediately; and (2) by writing directly to the debtor, even though she was
8 represented by counsel. *Randolph* reversed a lower court decision holding that the
9 Bankruptcy Code provided the exclusive remedy, holding instead that the Code
10 and the FDCPA overlapped and that the debtor's FDCPA claims were legally
11 cognizable. *Id.* at 733.

12 *Chaussee* declined to follow *Randolph*, but did so by carefully
13 distinguishing the case factually: "Unlike in *Randolph*, where the debtor's claim
14 against the creditor was based upon the creditor's actions taken after conclusion of
15 the bankruptcy case, the purported FDCPA violation targets B-Real's act of filing a
16 proof of claim in the pending bankruptcy case. Application of the FDCPA to this
17 conduct would certainly conflict with the Code." 399 B.R. at 237. *Chaussee* did
18 not discuss whether the Ninth Circuit might adopt *Randolph*'s reasoning in another
19 context, but instead limited its holding to the facts before it.

20 Defendants rely on *Chaussee* to argue that Plaintiffs' claims are preempted
21 because they "allege wrongful conduct which occurred in the context and confines
22 of a bankruptcy case" (Ct. Rec. 8-1, p. 5). However, that language highlights the
23 critical factual distinction between this case and *Chaussee*: there, the debtor filed
24 her CPA and FDCPA claims in response to a collection agency's filing of proofs of
25 claim in the debtor's pending bankruptcy proceeding. That is wholly different from
26 the facts here, which are instead functionally identical to those in *Randolph*:
27 Plaintiffs allege that Defendants, functioning as collection agencies, directly
28 contacted Plaintiffs after a bankruptcy proceeding had terminated, and falsely

1 claimed that Plaintiffs owed additional funds. *Randolph* holds that those
2 allegations do state a claim upon which relief can be granted.

3 Defendants also cite a case which is discussed at length in *Chaussee: Walls*
4 *v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). There, a chapter 7 debtor
5 brought an FDCPA claim against a creditor who foreclosed on her house after the
6 debtor stopped making payments on a debt that had been discharged in the debtor's
7 bankruptcy case. The Circuit held that there was no private right of action under
8 the Bankruptcy Code, that the Code precluded any claims under the FDCPA, and
9 that the debtor's sole remedy was contempt under the Bankruptcy Code, 11 U.S.C.
10 § 524. A district court in California followed *Walls* and rejected *Randolph* where a
11 debtor alleged that collection agencies attempted to collect on a discharged debt.
12 *Goad v. MCT Group*, 2009 WL 4730905 (S.D. Cal. 2009) (unpublished).

13 Plaintiff attempts to distinguish *Walls* by pointing out that the debt in
14 question here, to Defendant Wells Fargo, was *not* discharged in Plaintiffs'
15 bankruptcy. The Court agrees: that fact is a critical distinction that supports denial
16 of the motion to dismiss. The Bankruptcy Code specifically provides an injunction
17 for discharged debts, which subjects creditors who attempt to collect that debt to
18 contempt. 11 U.S.C. § 524(a)(3). That is the basis of the holding in *Walls*: that
19 future misconduct by a creditor with respect to a *discharged* debt must be
20 redressed through the Bankruptcy Code alone.

21 Thus, each of the cases Defendants cite are distinguishable. This is not like
22 *Chaussee* or *MSR Exploration*, which involved proofs of claim filed in pending
23 bankruptcy proceedings. This is not like *Bassett*, which involved alleged violations
24 of a reaffirmation agreement under 11 U.S.C. § 524. This is not like *Walls*, which
25 involved alleged misconduct in the collection of a debt discharged under 11 U.S.C.
26 § 524. Here, Plaintiffs did not discharge the debt under § 524, and they do not
27 allege that Defendants have violated any provision of the Bankruptcy Code. This
28 case is much closer to *Randolph*, and the Court finds that same analysis applicable

1 here. Although the Ninth Circuit has not yet accepted *Randolph*, it has never dealt
2 with the kind of facts involved in *Randolph* and our case here.

3 Defendants' final argument with respect to the FDCPA claim is that it is
4 barred by a one-year statute of limitations. However, as both parties agree, the sole
5 date of misconduct alleged in the Complaint is July 30, 2010, and the Complaint
6 was filed on September 8, 2010. Accordingly, the statute of limitations does not
7 bar this claim.

8 Therefore, the Court declines to dismiss Plaintiffs' FDCPA claim.

9 2. *State Law Claim*

10 Defendants' primary argument here is that Defendants are not "collection
11 agencies" as defined in the CPA as a matter of law. No factual record has been
12 developed which could change the analysis.

13 The Complaint alleges that Defendant Weinstein functioned as a collection
14 agency under state law, and that Defendant Wells Fargo violated the CPA by using
15 Defendant Weinstein to collect an amount that was not owed. Washington State
16 law exempts from the definition of a collection agency "[a]ny person whose
17 collection activities are carried on in his, her, or its true name and are confined and
18 are directly related to the operation of a business other than that of a collection
19 agency, such as... lawyers." RCW 19.16.100(3)(c).

20 Defendants cite *Hobbs v. Deutsche Bank Trust Co. America's FKA*, 122
21 Wash. App. 1058 (Wash. App. Div. 1 2004). There, a homeowner moved to set
22 aside a trustee's sale of her house as void by arguing that the lenders who profited
23 from the sale lacked standing to oppose her motion because the law firm that
24 represented them was a third party debt collector without a license. The Court of
25 Appeals rejected this argument, noting that "lawyers are exempted from the
26 licensing requirements for collection agencies" under RCW 19.16.100. Defendants
27 also cite a companion case, *LaSalle Nat. Bank v. Hobbs*, 122 Wash. App. 1058
28 (Wash. App. Div. 1 2004), which notes in dicta that the same law firm, Bishop,

1 was exempt from licensing requirements. Finally, Defendants cite *Trust Fund Serv.*
2 *v. Aro Glass Co.*, 89 Wash. 2d 758, 761-62 (Wash. 1978), which held that a non-
3 profit corporation set up by a law firm to collect debts related to the firm's business
4 was not a collection agency.

5 Plaintiffs read RCW 19.16.100(3)(c) differently, arguing that "the exemption
6 applies to businesses which are attempting to collect on account receivables." In
7 support, Plaintiffs cite *LeClair v. Suttell and Assoc.*, 2010 WL 417418, *6 (W.D.
8 Wash. 2010). *LeClair* distinguishes between law firms who act to collect debts
9 owed directly to them and law firms who collect debts on behalf of another,
10 finding that only the former are exempt under RCW 19.16.100. This is consistent
11 with an earlier Western District case reaching the same result, *Semper v. JBC Legal*
12 *Group*, 2005 WL 2172377 (W.D. Wash. 2005). Neither case is published.

13 The Court agrees with *LeClair*, *Semper*, and Plaintiffs' reading of the
14 statute. The language exempts entities whose collection activities "are confined
15 and are directly related to the operation of a business other than that of a collection
16 agency." RCW 19.16.100(3)(c). That clearly would encompass a law firm acting to
17 collect its own debts, as in *Trust Fund*, 89 Wash. 2d at 761-62, but not a firm
18 seeking to collect another's debts. Neither *Hobbs* case Defendants cite is precisely
19 on point, neither examines the distinction highlighted in *LeClair* and *Semper*, and
20 the second *Hobbs* case offers only dicta on this issue. The Court finds the Western
21 District cases are persuasively reasoned and consistent with the statutory language.
22 Therefore, the Court will follow them and decline to dismiss Plaintiffs' state law
23 claim as well.

24 Accordingly, **IT IS HEREBY ORDERED:**

- 25 1. Defendants' Motion to Dismiss (Ct. Rec. 8) is **DENIED**.
26 2. Defendants' Motion to Strike (Ct. Rec. 13) is **DENIED**.

27 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
28 Order and forward copies to counsel.

1 **DATED** this 21st day of December, 2010.

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3 *s/Robert H. Whaley*
4 **ROBERT H. WHALEY**
5 United States District Judge
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